



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R10-OAR-2011-0609; FRL -9909-97-OAR]

Approval and Promulgation of Implementation Plans; Alaska:

Interstate Transport of Pollution

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve the State Implementation Plan submittals from Alaska to address the interstate transport provisions of the Clean Air Act in section 110(a)(2)(D)(i)(I) for the 2006 fine particulate matter, 2008 ozone, and 2008 lead National Ambient Air Quality Standards. The Clean Air Act requires that each State Implementation Plan contain adequate provisions prohibiting air emissions that will have certain adverse air quality effects in other states. The EPA has determined that Alaska's State Implementation Plan submittals on March 29, 2011, and July 7, 2012, contain adequate provisions to ensure that air emissions in Alaska do not significantly contribute to nonattainment or interfere with maintenance of the 2006 fine particulate matter, 2008 ozone, and 2008 lead National Ambient Air Quality Standards in any other state.

DATES: Comments must be received on or before [INSERT DATE 30 DAYS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R10-OAR-2011-0609, by any of the following methods:

- www.regulations.gov: Follow the on-line instructions for submitting comments.
- E-mail: R10-Public_Comments@epa.gov
- Mail: Keith Rose, EPA Region 10, Office of Air, Waste and Toxics (AWT-107), 1200 Sixth Avenue, Suite 900, Seattle WA, 98101
- Hand Delivery / Courier: EPA Region 10 9th Floor Mailroom, 1200 Sixth Avenue, Suite 900, Seattle WA, 98101. Attention: Keith Rose, Office of Air, Waste and Toxics, AWT - 107. Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information

Instructions: Direct your comments to Docket ID No. EPA-R10-OAR-2011-0609. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov website is an "anonymous access" system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to the EPA without going through www.regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your

name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy during normal business hours at the Office of Air, Waste and Toxics, EPA Region 10, 1200 Sixth Avenue, Seattle WA, 98101.

FOR FURTHER INFORMATION CONTACT: Keith Rose at (206) 553-1949, rose.keith@epa.gov, or the above EPA Region 10 address.

SUPPLEMENTARY INFORMATION: Throughout this document whenever “we,” “us,” or “our” is used, it is intended to refer to the EPA. Information is organized as follows:

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I. Background

A. National Ambient Air Quality Standards and Interstate Transport

In recent years, the EPA revised the fine particulate matter (PM_{2.5}), ozone, and lead (Pb) National Ambient Air Quality Standards (NAAQS). The EPA revised the 1997 24-hour primary and secondary NAAQS for PM_{2.5} from 65 micrograms per cubic meter (µg/m³) to 35 µg/m³ (71 FR 61144, October 17, 2006). Subsequently, the EPA revised the levels of the primary and secondary 8-hour ozone standards from 0.08 to 0.075 parts per million (73 FR 16436, March 12, 2008). Finally, the EPA revised the level of the primary and secondary Pb NAAQS from 1.5 µg/m³ to 0.15 µg/m³ (73 FR 66964, November 12, 2008).

The interstate transport provisions in the Clean Air Act (CAA) section 110(a)(2)(D)(i) (also called “good neighbor” provisions) require each state to submit a State Implementation Plan (SIP) that prohibits emissions that will have certain adverse air quality effects in other states. CAA section 110(a)(2)(D)(i) identifies four distinct elements related to the impacts of air pollutants transported across state lines. In this action, the EPA is addressing the first two elements of this section, specified at CAA section 110(a)(2)(D)(i)(I)¹, for the 2006 PM_{2.5}, 2008 ozone, and 2008 Pb NAAQS.

The first element of CAA section 110(a)(2)(D)(i)(I) requires that each SIP for a new or revised NAAQS contain adequate measures to prohibit any source or other type of emissions

¹ This proposed action does not address the two elements of the interstate transport SIP provision in CAA section 110(a)(2)(D)(i)(II) regarding interference with measures required to prevent significant deterioration of air quality or to protect visibility in another state.

activity within the state from emitting air pollutants that will “contribute significantly to nonattainment” of the NAAQS in another state. The second element of CAA section 110(a)(2)(D)(i)(I) requires that each SIP prohibit any source or other type of emissions activity in the state from emitting pollutants that will “interfere with maintenance” of the applicable NAAQS in any other state.

B. EPA Interstate Transport Regulatory Actions

The EPA has addressed the requirements of CAA section 110(a)(2)(D)(i)(I) in past regulatory actions.² The EPA published the final Cross-State Air Pollution Rule (Transport Rule) to address the first two elements of CAA section 110(a)(2)(D)(i)(I) in the eastern portion of the United States with respect to the 2006 PM_{2.5} NAAQS, the 1997 PM_{2.5} NAAQS, and the 1997 8-hour ozone NAAQS (August 8, 2011, 76 FR 48208). The Transport Rule was intended to replace the earlier Clean Air Interstate Rule (CAIR) which was judicially remanded.³ *See North Carolina v. EPA*, 531 F.3d 896 (D.C. Cir. 2008). On August 21, 2012, the U.S. Court of Appeals for the D.C. Circuit issued a decision vacating the Transport Rule. *See EME Homer City Generation, L.P. v. E.P.A.*, 696 F.3d 7 (D.C. Cir. 2012). The court also ordered the EPA to continue implementing CAIR in the interim. The United States Supreme Court granted the petitions of the United States and others and agreed to review the D.C. Circuit decision. Oral argument before the Supreme Court was held on December 10, 2013. Unless the *EME Homer City* decision is reversed or otherwise modified by the Supreme Court, the EPA intends to act in accordance with

² *See* NO_x SIP Call, 63 FR 57371 (October 27, 1998); Clean Air Interstate Rule (CAIR), 70 FR 25172 (May 12, 2005); and Transport Rule or Cross-State Air Pollution Rule, 76 FR 48208 (August 8, 2011).

³ CAIR addressed the 1997 annual and 24-hour PM_{2.5} NAAQS, and the 1997 8-hour ozone NAAQS. It did not address the 2006 24-hour PM_{2.5} NAAQS. For more information on CAIR, see the July 30, 2012 proposal for Arizona regarding interstate transport for the 2006 PM_{2.5} NAAQS (77 FR 44551, 44552).

the D.C. Circuit opinion in *EME Homer City*.⁴ The State of Alaska was not covered by either CAIR or the Transport Rule, and the EPA made no determinations in either rule regarding whether emissions from sources in Alaska significantly contribute to nonattainment or interfere with maintenance of the 2006 PM_{2.5} NAAQS in another state. Thus, although the D.C. Circuit decision affects whether or not the 110(a)(2)(D)(i)(I) SIP is considered a required SIP submission, the decision has no direct impact on EPA's evaluation of Alaska's SIP submission.

C. EPA Guidance on Interstate Transport

The EPA has issued two guidance documents relevant to CAA section 110(a)(2)(D)(i)(I). On September 25, 2009, the EPA issued the "Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 2006 24-Hour Fine Particle (PM_{2.5}) NAAQS." On October 14, 2011, the EPA issued the "Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 2008 Lead (Pb) NAAQS." The EPA has not to date issued guidance related to CAA section 110(a)(2)(D)(i)(I) for the 2008 8-hour ozone NAAQS. As discussed below, Alaska's analyses of its SIP with respect to the statutory requirements of CAA section 110(a)(2)(D)(i)(I) are consistent with the EPA's September 25, 2009, and October 14, 2011, guidance. The discussion below describes how Alaska's submittals have addressed CAA section 110(a)(2)(D)(i)(I).

II. State Submittals

On March 29, 2011, the State submitted a SIP to address CAA section 110(a)(2)(D)(i) for the 2006 24-hour PM_{2.5} and 2008 8-hour ozone NAAQS. The State addressed CAA section

⁴ In accordance with the D.C. Circuit decision in *EME Homer City*, the EPA at this time is not treating the 110(a)(2)(D)(i)(I) SIP submissions from Alaska for the 2006 PM_{2.5}, 2008 ozone and 2008 Pb NAAQS as required SIP submissions. See *EME Homer City Generation, L.P. v. EPA*, 696 F.3d 7 (D.C. Cir. 2012), cert. granted, 2013 U.S. Lexis 4801 (2013). Regardless of whether a particular SIP submission is considered "required," section 110(k)(2) of the CAA requires EPA to act on the submission. Therefore, EPA is proposing to act on the portion of Alaska's SIP submissions that address the requirements of section 110(a)(2)(D)(i)(I).

110(a)(2)(D)(i)(I) by providing information supporting the conclusion that emissions from Alaska do not significantly contribute to nonattainment or interfere with maintenance of the 2006 24-hour PM_{2.5} and 2008 8-hour ozone NAAQS in another state. The State's submittal noted that Alaska's southern-most border is separated from the nearest nonattainment areas in the State of Washington by over 600 miles. Specifically, the nearest 2006 PM_{2.5} nonattainment area is located in Tacoma (Pierce County), Washington, and the nearest 2008 ozone nonattainment area is located in Chico (Butte County), California. The Yukon Territory and the Province of British Columbia, Canada, are located between these nonattainment areas and the border of Alaska. The State's submittal also stated that the Municipality of Anchorage and the Fairbanks North Star Borough, which have the highest emissions of PM_{2.5}, ozone and PM_{2.5} precursors in Alaska, are located over 1400 miles from the nearest nonattainment areas. In addition, the State's submittal pointed to aggregate manmade PM_{2.5} and ozone precursor levels that are minimal relative to national levels. A state-wide emissions inventory showed that facilities in Alaska make up only 0.1 percent of the total PM_{2.5} emissions in the United States. Similarly, precursor emissions to PM_{2.5} (e.g., sulfur dioxide and nitrogen oxides) and precursor emissions to ozone (e.g., volatile organic compounds and nitrogen oxides) from facilities in Alaska make up less than 0.2 percent of United States' emissions for those pollutants. The State's submittal also stated that in Alaska, the regional, predominant low pressure wind patterns emanate from the Gulf of Alaska in the west and travel inland towards the east, circulating in a counterclockwise direction. These predominant low pressure wind patterns would not generally be expected to transport air pollutants from Alaska south to the States of Washington or California. The State's submittal

concluded that emissions from Alaska do not significantly contribute to nonattainment or interfere with maintenance of the 2006 PM_{2.5} and 2008 ozone NAAQS in another state.

On July 7, 2012, the State submitted a SIP to address the 2008 Pb NAAQS (Pb Interstate Transport SIP). The State's Pb Interstate Transport SIP specifically addressed CAA section 110(a)(2)(D)(i)(I) and stated that there are no designated Pb nonattainment areas in Alaska or the Pacific Northwest (Washington, Oregon, and Idaho). Potential sources of atmospheric Pb in Alaska are due primarily to the burning of aviation gasoline, which contains tetraethyl-lead, in piston-engine aircraft. The State's submittal referenced Pb monitoring conducted in the State and discussed the large geographic distance of Alaska from neighboring states, and predominant low pressure wind patterns which would not generally be expected to transport pollutants long distances from Alaska to neighboring states. The State concluded that emissions of Pb from Alaska do not significantly contribute to nonattainment or interfere with maintenance of the 2008 Pb NAAQS in another state.

As stated in the EPA's October 14, 2011, guidance, the EPA believes that the physical properties of Pb prevent Pb emissions from experiencing the same travel or formation phenomena as PM_{2.5} or ozone. More specifically, there is a sharp decrease in Pb concentrations, at least in the coarse fraction, as the distance from a Pb source increases. Accordingly, while it may be possible for a source in a state to emit Pb in a localized area in quantities that may contribute significantly to nonattainment in, or interfere with maintenance by, any other state, the EPA anticipates that this would be a rare situation, e.g., where large sources are in close proximity to state boundaries. The EPA's experience with initial Pb designations suggests that sources that emit less than 0.5 tons per year or that are located more than two miles from a state

border generally appear unlikely to contribute significantly to nonattainment in another state. The only source of Pb in Alaska that exceeds an emission rate of 0.5 tons per year is the Red Dog Mine near Kotzebue, which is over 1,000 miles from the border of the nearest state.

III. Proposed Action

Based on the State's submittals, the EPA concludes the State has sufficiently demonstrated that emissions from Alaska do not significantly contribute to nonattainment or interfere with maintenance of the 2006 PM_{2.5}, 2008 ozone, or 2008 Pb NAAQS in another state. Therefore, the EPA is proposing to approve the March 29, 2011, and July 7, 2012, submittals from the State of Alaska to address the interstate transport provisions of CAA section 110(a)(2)(D)(i)(I) for the 2006 PM_{2.5}, 2008 ozone, and 2008 Pb NAAQS. This action is being taken under CAA section 110.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Ozone, Particulate matter, Reporting and recordkeeping requirements, and Volatile organic compounds.

Dated: April 10, 2014.

Michelle L. Pirzadeh,
Acting Regional Administrator,
Region 10.

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